

Application No. 08/962,362

REMARKS

Claims 1-6, 20-30 and 32-34 are pending. All of the pending claims stand rejected. Applicants respectfully request reconsideration of the rejections based on the following comments.

Rejection of Claims 1-6 and 20-30 Over Jaskie and Bhargava

The Examiner rejected claims 1-6 and 20-30 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,442,254 to Jaskie in view of U.S. Patent 5,455,489 to Bhargava. The Examiner has declined to consider Applicants' arguments regarding this rejection in view of an earlier Board decision. Thus, these claims will be the subject of a subsequent appeal. Applicants note for the record that a claim similar to independent claim 5 has issued in the EP, see EP 1 027 400B.

Rejection of Claims 32 and 33

The Examiner rejected claims 32 and 33 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,892,999 to Tamatani et al. (the Tamatani patent) and further in view of U.S. Patent 5,460,701 to Parker (the Parker patent). Applicants incorporate by reference their arguments from the Amendment dated March 15, 2005. To simplify the discussion, Applicants focus here on the Examiner's response to Applicants' earlier arguments. Applicants maintain that the Examiner has not established *prima facie* obviousness of claims 32 and 33. Applicants note for the record that a claim similar to claim 32 has issued as claim 19 in EP 1 027 400B. Applicants respectfully request reconsideration of the rejection based on the following comments.

The Examiner acknowledges that the Parker patent teaches agglomerates in which the agglomerates and not the crystallites correspond to "particles" of Applicants' claim.

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However, the Examiner asserts that Table 2 refers to agglomerates and not crystallites. Applicants respectfully disagree with the characterization of Table 2, and further, even if for arguments sake it is assumed that Table 2 refers to agglomerate size, the Parker patent does not teach the claimed particle size uniformity.

The discussion under Table 2 makes it extremely clear that Table 2 is referring to crystallite size. The crystallite size is determined from transmission electron microscopy (TEM) or surface area (BET). The "crystallite size" in Table 3 is on the same order as the size in Table 2. Due to this association between Table 2 and Table 3, it is clear that Table 2 is referring to crystallite size. Also, as noted in Table 3, the pore size is on the same order as the crystallite size.

Even if the sizes in Table 2 are assumed to be particles sizes for discussion, which they are not, the particle size distributions in Table 2 are not within Applicants' claimed uniformity. Table 2 indicates some "width" relating to the particle size distribution. However, this width is not described with enough detail to explain what it represents. Presumably, it is the width of a standard deviation or so. However, regardless of what this width represents, it does not teach or suggest a particle size distribution "having a diameter distribution such that at least about 95 percent of the particles have a diameter greater than about 60 percent of the average diameter and less than about 140 percent of the average diameter." The Examiner has failed to explain how this teaches the feature of the claim.

If the cited art does not teach or suggest all of the claim elements, *prima facie* obviousness has not been established, and the rejection must be withdrawn. Applicants maintain that the Examiner has not established *prima facie* obviousness. Applicants respectfully request withdrawal of the rejection of claims 32 and 33 under 35 U.S.C. § 103(a) as being unpatentable over the Tamatani patent and further in view of the Parker patent.

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## CONCLUSIONS

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,



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